

Victorian Law Reform Commission
Committals Issues Paper, June
2019

Submission by the Children's Court of
Victoria

Dated 6 September, 2019



Executive Summary

The Children's Court is a specialist jurisdiction in Victoria for children and young people. The Children's Court of Victoria (the Court) was established by s 8(1) of the *Children and Young Persons Act 1989* and continues in operation under s 504(1) of the *Children, Youth and Families Act 2005* (CYFA). Two main purposes of the CYFA are to make provision in relation to children who have been charged with or found guilty of offences; and to continue the Court as a specialist court dealing with matters relating to children.

For the reasons outlined in this submission, the Court considers it undesirable that proceedings against children charged with death-related and non-fatal serious youth offences be transferred to an adult jurisdiction before a committal process is finalised in the specialist, 'distinctive' jurisdiction of the Court. However, as this submission highlights, the rights of the child to a fair pre-trial process must be balanced against the interests of victims. In this respect, the Court's submission suggests a number of legislative amendments to improve the experience of victims in the pre-trial process.

The Criminal Division of the Court exercises jurisdiction under s 516(1) of the CYFA. The Criminal Division has jurisdiction to hear all summary and indictable offences charged against a child,¹ except for the six death-related offences of murder, attempted murder, manslaughter, child homicide, arson causing death or culpable driving causing death,² and certain serious youth offences and other offences considered unsuitable for summary determination.³ In such cases, the Court must proceed to conduct a committal proceeding in relation to the relevant indictable charge/s. At the end of a committal proceeding the Court can either direct the child to be tried,⁴ or discharge the child.⁵

The first Part of this submission outlines the Court's criminal jurisdiction, the characteristics of youth offenders, relevant youth justice reforms⁶ and their impact on the case management of indictable offences in the Court, particularly in its committal stream.

The second Part of this submission responds to selected questions raised in the Issues Paper. The third Part of the submission details relevant Court data on uplifted matters and committals conducted by the Court for the period 2014-15 to 2018-19. As this data outlines, the youth justice reforms have resulted in a comparatively significant increase in the number of matters initiated in the committal stream of the Children's Court.

However, two trends are notable.

First, that a significant number of matters initiated in the committal stream resolve on the basis that they are capable of being heard and determined summarily. In 2017-18, of the 22 cases initiated in the committal stream, 55% were ultimately dealt with summarily. In

¹ A person aged 10 or more, and under the age of 18 at the time of the alleged offending (s 3(1) CYFA).

² Section 516(1)(b) CYFA.

³ Section 356(3)(b) CYFA.

⁴ And order that the child be remanded in custody until trial, or grant bail to the child (s 516(1)(c)(i)).

⁵ Section 516(1)(c)(ii) CYFA.

⁶ Via the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*.

to 2018-19, of the 52 cases initiated in the committal stream, 46% were dealt with summarily.

In the submission of the Court, where the issue of whether indictable charges brought against a child are capable – as a matter of jurisdiction – of being heard and determined in a specialist Court or an adult court, it is appropriate that they be instituted, and case managed in the specialist jurisdiction of the Children's Court. This, in turn, avoids the undesirable outcome of charges involving child accused being transferred or remitted between jurisdictions.

Second, the data reveals that, on average, the duration of committal hearings conducted in the Court is between one to two days. It can be inferred from this data that the committal mention process in the Court has successfully led to the identification or narrowing of the issues in dispute and the committal hearing being confined to necessary witness examination and cross-examination.

The Children's Court, does however, consider that legislative reform is needed to address three areas of concern that have become apparent with the introduction of the youth justice reforms and which potentially impact on the experience of victims in the management of serious youth offences in the Court.

Firstly, there is currently no legislative mechanism to permit joint committals to be held for adult and child co-accused charged with any non-fatal serious youth offence or indictable offence uplifted pursuant to s 356(3) of the CYFA. Section 516A of the CYFA enables joint committals to be held for adult and child co-accused charged with a death-related offence. In doing so, victims and witnesses are only required to participate in the one committal proceeding. The Court considers it desirable that the scope of s 516A of the CYFA be expanded to enable joint committals to be conducted in circumstances where a child and adult co-accused are subject to a committal proceeding.

Secondly, there is currently no legislative limitation imposed on the time within which an application for summary jurisdiction may be made where a child is charged with a non-fatal Category A serious youth offence. In some instances, this has resulted in the application for summary jurisdiction being made at the conclusion of the committal proceeding. If, having required relevant witnesses for the committal hearing, the application for summary jurisdiction is then granted but the charges remain disputed, there is the potential for witnesses being required to give evidence again, this time at the contested hearing. In the view of the Court, a legislative amendment is required to rectify this situation. The Court is unable to issue a practice note or direction that conflicts or limits the rights available under the CYFA.

Thirdly, there is currently no legislative mechanism by which the Court can transfer related indictable offences where a child – aged 16 years or older at the time of the alleged offence – is also charged with a Category A (or B) serious youth offence and is committed to stand trial. Unlike the power to transfer related summary offences pursuant to s 145 of the *Criminal Procedure Act 2009* (CPA) (which applies in the Court by force of s 528 of the CYFA), there is no mechanism to transfer related indictable offences

unless ‘exceptional circumstances’ are found to exist under s 356(3) of the CYFA. The potential consequence of this procedural limitation is that separate jurisdictions may be determining charges/sentencing the child for related offending.

Part 1: Jurisdiction of the Children’s Court and youth justice reforms

The *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 (Youth Justice Reform Act)* made significant amendments to the CYFA and other Acts. In order to provide the necessary background/context to the Court’s responses to the Issues Paper, relevant *Youth Justice Reform Act* amendments are outlined below.

Pre-5 April 2018 youth justice reforms

Under the CYFA, the Court has jurisdiction to hear criminal matters against child accused, save for the subject-matter exceptions outlined earlier. The six death-related offences excluded from the Court’s jurisdiction are the subject of mandatory uplift to a higher court.

A child may object to the Children’s Court hearing an indictable offence summarily,⁷ however it is very rare for a child to object to a summary hearing in the Court.

In all other circumstances, prior to the youth justice reforms, the Court’s power to uplift indictable charges arose where the Court, at any stage, determined that the charges were by reason of ‘exceptional circumstances’ to be heard and determined summarily pursuant to s 356(3) of the CYFA. Case law considering uplift in these circumstances consistently held that a matter should only be removed from the ‘distinctive’ jurisdiction of the Court where there were “very special”, “unusual” or “exceptional” circumstances (see, eg, *DL (a minor by his litigation guardian) v A Magistrate of the Children’s Court*,⁸ *A Child v A Magistrate of the Children’s Court*).⁹

Certain factors that the Court was required to consider in the ‘exceptional circumstances’ test at common law were incorporated into s 356A of the CYFA, a provision inserted by the *Youth Justice Reform Act* on 26 February 2018. The degree to which s 356A incorporates the common law considerations is unclear.¹⁰

Section 356A(1) provides that for the purposes of s 356(3)(b) exceptional circumstances exist if the Court considers that the sentencing options available under the CYFA are inadequate to respond to the child’s offending. In determining whether the sentencing options are inadequate s 356A(2) requires the Court to have regard to:

- a) the seriousness of the conduct alleged, including the impact on any victims of the conduct and the role of the accused in the conduct; and
- b) the nature of the offence; and

⁷ Section 356(3)(a) CYFA.

⁸ Unreported, Supreme Court of Victoria, Vincent J, 9 August 1994, 4.

⁹ Unreported, Supreme Court of Victoria, Cummins J, 24 February 1992, 9.

¹⁰ See, eg, *DPP v JM* [2018] VChC 5 at [31].

- c) the age and maturity of the child, and any disability or mental illness of the child, at the time of the offence and the time of sentencing; and
- d) the seriousness, nature and number of any prior offences committed by the child; and
- e) whether the alleged offence was committed while the child was in youth detention, on parole or in breach of an order made under the CYFA; and
- f) any other matter the Court considers relevant.

Post-5 April 2018 youth justice reforms

The legislative framework was amended on 5 April 2018 by the *Youth Justice Reform Act* which inserted new definitions of Category A and B serious youth offences in the CYFA and made significant amendments to the procedure for indictable offences that may be heard and determined summarily in the Court.

As and from 5 April 2018 the following definitions were included in s3(1) of the CYFA:

“Category A serious youth offence” means any of the following offences—

- a) murder;
- b) attempted murder;
- c) manslaughter;
- d) child homicide;
- e) an offence against any of the following sections of the Crimes Act 1958
 - i. section 15A (intentionally causing serious injury in circumstances of gross violence);
 - ii. section 77B (aggravated home invasion);
 - iii. section 79A (aggravated carjacking);
 - iv. section 197A (arson causing death);
 - v. section 318 (culpable driving causing death);
- f) an offence against any one of the following—
 - i. section 4B of the Terrorism (Community Protection) Act 2003;
 - ii. a provision of Subdivision A of Division 72 of Chapter 4 of the Criminal Code of the Commonwealth;
 - iii. a provision of Part 5.3 or 5.5 of the Criminal Code of the Commonwealth;
 - iv. a provision of the Crimes (Foreign Incursions and Recruitment) Act 1978 of the Commonwealth as in force before its repeal.

“Category B serious youth offence” means an offence against any of the following sections of the Crimes Act 1958 –

- a) section 15B (recklessly causing serious injury in circumstances of gross violence);
- b) section 38 (rape);
- c) section 39 (rape by compelling sexual penetration);
- d) section 77A (home invasion);
- e) section 79 (carjacking).

Presumption of uplift - where a child is charged with a Category A serious youth offence committed when the child was aged 16 or over

The *Youth Justice Reform Act* amended the CYFA to introduce a presumption of uplift to a higher court where a child is charged with a Category A serious youth offence committed when the child was aged 16 years or over (s 356(6) CYFA).

Section 356(6) provides:

- (6) If a child is charged before the Court with a Category A serious youth offence committed when the child was aged 16 years or over, other than murder, attempted murder, manslaughter, child homicide, an offence against section 197A of the Crimes Act 1958 (arson causing death) or an offence against section 318 of the Crimes Act 1958 (culpable driving causing death), the Court must not hear and determine the charge summarily unless—
 - (a) the child or the prosecution requests that the charge be heard and determined summarily; and
 - (b) the Court is satisfied that the sentencing options available to it under this Act are adequate to respond to the child's offending; and
 - (c) any of the following applies—
 - (i) it is in the interests of the victim or victims that the charge be heard and determined summarily;
 - (ii) the accused is particularly vulnerable because of cognitive impairment or mental illness;
 - (iii) there is a substantial and compelling reason why the charge should be heard and determined summarily.
- (7) In determining whether there is a substantial and compelling reason why the charge should be heard and determined summarily, the Court must have regard to the intention of the Parliament that a charge for a Category A serious youth offence should not normally be heard and determined summarily.

The issue of whether the Court has adequate sentencing options available to it to respond to the child's offending is not always in dispute and in the instances below, was conceded by the prosecution. One reason for this is the significant increase in the sentencing powers of the Children's Court introduced by the youth justice reforms.

On 30 November 2017 the *Youth Justice Reform Act* amended s 413 of the CYFA to increase the maximum term of detention in a Youth Justice Centre from two years to three years (for a single offence), and the maximum aggregate term of imprisonment of detention from three to four years. Further, the sentencing principles applied in the Children's Court are significantly different from those applied in Victorian courts when sentencing adult offenders. As noted by Vincent JA in *R v Evans* [2003] VSCA 223 (at [44]), when discussing identical sentencing provisions to the CYFA in its predecessor, the *Children and Young Persons Act 1989*:

An elaborate system has been developed to deal with the problem of offending by children and young persons in our community, with a separate court, separate detention facilities, supervision systems and so forth. Whilst broadly speaking, normal sentencing principles can be said to remain applicable when dealing with youthful offenders, as a matter of law and practice it is recognised that the respective weight to be given to relevant factors will vary. In addition the *Children and Young Persons Act 1989* (Vic) sets out a number of matters to which a sentence in the Children's Court must have regard and which differ in kind and emphasis from roughly similar provisions in the *Sentencing Act 1991* (Vic). Underlying this system is the attribution of considerable significance to the generally accepted immaturity of the young people who appear before the Children's Court and the need, in the interests of the community and the young persons concerned, to endeavour to divert them from engagement in anti-social conduct at that early stage of their lives. These considerations can and do lead to dispositions which would be regarded as entirely inappropriate in the case of older and presumably more mature individuals. (citations omitted)

Two recent decisions have considered the test in s 356(6) of the CYFA (and the equivalent transfer provision in the CPA).

In *PT v DPP* [2019] VCC 836, PT (aged 17 at the time of the alleged offending) was charged with a Category A serious youth offence of aggravated home invasion which the Court had earlier uplifted to the County Court pursuant to s 356(6) of the CYFA. The accused applied to the County Court for an order under ss 168 and 168A of the CPA for the transfer of the charge back to the Children's Court. The test under s 356(6) of the CYFA is in similar terms to s 168A of the CPA.

At issue in this case was whether there was a "substantial and compelling reason" why the home invasion offence should be heard and determined summarily. Judge Gamble held that the test was a "relatively high" one, as opposed to a "high" or "very high" one, and that the relevant provisions impose something less than a "heavy" onus or burden.¹¹

Despite finding that the Children's Court would have adequate sentencing options to respond to the offending (conceded by the prosecution), the fact of PT's prior, current and subsequent offending (including while the court proceedings were on foot and when PT was on bail for the current offences and probation for the earlier offences), and the absence of matters in mitigation beyond those that "infrequently arise in offending of this type", Judge Gamble held that PT had failed to discharge the onus of establishing a substantial and compelling reason to transfer the matter back to the Children's Court.¹²

In *WB v DPP* [2019] VChC 1, President Chambers heard and determined an application for summary jurisdiction for a child accused charged with the Category A serious youth offence of aggravated carjacking. The accused was 17 years of age at the time of the alleged offending. In *WB*, the President found the Court had adequate sentencing options to respond to the offending (again, a finding conceded by the prosecution).¹³

¹¹ At [61].

¹² At [74].

¹³ At [25].

President Chambers adopted the characterisation given by Judge Gamble to the phrase “substantial and compelling reason” in s 356(6)(c)(iii) of the CYFA whether the “relatively high” burden of establishing substantial and compelling reason for the Category A serious youth offence to be heard and determined summarily was met. WB’s childhood was marked by extraordinary trauma, instability, abuse and neglect, and WB had a low level of cognitive functioning, diagnosed disorders and mental health issues. Further, there was cogent evidence of WB being the victim of two instances of rape whilst in custody. It was on those particular facts that President Chambers held that the combination of factors constituted a “substantial and compelling reason” for the charge to be heard and determined summarily in a specialist Children’s Court.¹⁴

Further, in at least two other cases before the Children’s Court involving children charged with Category A serious youth offences (and in one matter the child accused was charged with both a Category A and Category B serious youth offence), the prosecution conceded, during applications by the accused for summary jurisdiction, that the Court had adequate sentencing options to respond to the subject offending. In both cases the Court granted the applications for summary jurisdiction.

Uplift to a higher court if exceptional circumstances exist - where a child is charged with a Category B serious youth offence committed when the child was aged 16 or over

The *Youth Justice Reform Act* amended the CYFA to require the Court to consider, where a child is charged with a Category B serious youth offence while aged 16 or over, whether the charges are not suitable for hearing and determining summarily because of exceptional circumstances (s 356(8) CYFA).

Section 356(8) provides:

- (8) If a child is charged before the Court with a Category B serious youth offence committed when the child was aged 16 years or over, the Court must consider whether subsection (3) has the effect that the offence should not be heard and determined summarily.

This requires the Court to, under ss 356(3) and 356A, consider if the matter should be uplifted due to exceptional circumstances. In summary, the pre-existing framework has been supplemented with the additional requirements for the Court to consider where child accused, aged 16 or over, are charged with any Category A or B serious youth offences.

The Court’s Practice Direction 2 of 2018 sets out the applicable procedure for Category A and B serious youth offences in Children’s Court venues in metropolitan, suburban and regional areas, a copy of which is attached.

The current framework is as provided in the following table:

¹⁴ At [58].

Mandatory uplift to a higher court	
Child charged with death-related offence (post-reform categorised as a Category A serious youth offence)	Category A serious youth offences
	Murder
	Attempted murder
	Manslaughter
	Child homicide
	Arson causing death (<i>Crimes Act s197A</i>)
	Culpable driving causing death (<i>Crimes Act s318</i>)
Presumption of uplift to a higher court	
Child aged 16 years or over when alleged to have committed a Category A serious youth offence	Category A serious youth offences
	Intentionally causing serious injury in circumstances of gross violence (<i>Crimes Act 1958 s15A</i>)
	Aggravated home invasion (<i>Crimes Act s77B</i>)
	Aggravated carjacking (<i>Crimes Act s79A</i>)
	An offence against any one of the following: <ul style="list-style-type: none"> • s4B of the <i>Terrorism (Community Protection) Act 2003</i> (Providing documents or information facilitating terrorist acts); • a provision of Subdivision A of Division 72 of Chapter 4 of the <i>Criminal Code Act 1995</i> (Cth) (International terrorist activities using explosive or lethal devices); • a provision of Part 5.3 (Terrorism) or 5.5 of the <i>Criminal Code Act 1995</i> (Cth) (Foreign incursions and recruitment); • a provision of the <i>Crimes (Foreign Incursions and Recruitment) Act 1978</i> (Cth) as in force before its repeal.
Uplift to a higher court if exceptional circumstances exist	
Child aged 16 years or over when alleged to have committed a Category B serious youth offence	Category B serious youth offences
	Recklessly causing serious injury in circumstances of gross violence (<i>Crimes Act 1958 s15B</i>)
	Rape (<i>Crimes Act s38</i>)
	Rape by compelling sexual penetration (<i>Crimes Act s39</i>)
	Home invasion (<i>Crimes Act s77A</i>)
	Carjacking (<i>Crimes Act s79</i>)
Child charged with any other serious indictable offence within the jurisdiction of the Court	

As the data outlines, on and from 5 April 2018 the youth justice reforms have had a significant impact on the work of the Criminal Division of the Court, most particularly on the operation of the Court's Fast Track Remand Court (FTRC), a list created to promote intensive case management of proceedings where the child accused are held on remand. The youth justice reforms have had two significant consequences. First, an increase in applications to determine jurisdiction, notably applications for summary jurisdiction being heard and determined in cases where the accused are charged with Category A serious youth offences. Secondly, a significant increase in the number of matters initiated in the committal stream and in the number of committal hearings now heard and determined in the Court.

The context in which the youth justice reforms were introduced is also important to consider. Overall, the trends in youth offending reveal two apparently conflicting trends. One is the dramatic reduction in the number of individual children or young people ever sentenced in the Court. The Sentencing Advisory Council (SAC) recently reported that the annual number of sentenced children in Victoria decreased by more than two-thirds between 2008-2017.¹⁵

However, the competing trend is the sharp increase in the number of offenders aged 10-17 years who are responsible for a disproportionate number of incidents of offending, with increases in the number of individual child offenders who were responsible for multiple incidents of offending. Data provided by the Youth Parole Board (YPB), through its annual survey of young people detained on sentence or remanded, demonstrates the complex situation with young offenders. More than two-thirds have themselves been victims of abuse, trauma and neglect, over half present with mental health issues and a history of drug and alcohol abuse, with a significant number subject to child protection orders.¹⁶

Part 2: Issues Paper questions and Children's Court responses

Much of the discussion in the Issues Paper focused on committals conducted in the Magistrates' Court (MCV) in respect of adult accused. The Court's responses to certain Issues Paper questions have been appropriately modified given its specialist jurisdiction.

1. What purposes can or should committal proceedings serve?

Section 97 of the CPA outlines the purposes of a committal proceeding. While certain CPA provisions apply in committal proceedings in the Court with the necessary modification, it is arguable that the purposes and principles for committals in the Court should be considered in context of its specialist jurisdiction.

¹⁵ SAC, *'Crossover Kids': Vulnerable Children in the Youth Justice System, Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court* (2019) (Crossover Kids report), page 31.

¹⁶ Youth Parole Board, *Annual Report 2017-18* (2018), page 15.

Children's Court of Victoria

The Court's view is that proposals for the removal of committals to a pre-trial process should not apply to the specialist jurisdiction of the Court. Committals should be retained for child accused and in the jurisdiction of the Court as:

- The Court is a specialist court with an almost exclusive jurisdiction to hear and determine criminal charges against children aged 10-17 years of age. The Court's judicial officers have specialist expertise in determining matters involving children and young people, and its courtrooms, facilities, processes and procedures are child-centric and/or have been modified for the jurisdiction of the Court.
- At all stages of a criminal proceeding involving a child accused, including in committals for uplifted indictable offences, the Court is best placed to consider matters such as the strength of the evidence, case management, how the accused proposes to plead to the charge, and ensuring a fair and speedy trial of an accused.
- Where the MCV is required to consider whether indictable matters *should* be tried summarily in the MCV or to conduct committals into indictable offences pre-trial in the higher courts, the converse situation applies in the Court. The Court exercises a broader jurisdiction to hear and determine indictable offences and is required to determine when matters *should not* be determined summarily.
- The Issues Paper raises questions relating to the jurisdiction of the Children's Court. The Court has greater scope to hear and determine indictable matters summarily as one of its purposes is to provide a specialist court for the determination of criminal charges against children. Any proposal to remove the committals processes from the Court should be considered in this context, as it implies the transfer of aspects of the Court's jurisdiction to the higher adult courts. The Court is strongly opposed to any such proposal in relation to child accused, as the risks and disadvantages in excluding committals from its jurisdiction would far outweigh any perceived advantages.
- The committal process in the Court is important in the justice system in ensuring that child accused are only committed to trial in the appropriate cases, and without risk of unnecessary delays or the undesirable transfer/remittal of proceeding between jurisdiction. Any proposal to transfer this process to the higher courts will risk delaying proceedings involving child accused (see also the discussion below) and reverse the status quo in Victoria, namely that child accused should be tried in the Children's Court unless a statutory exception arises.
- The role of committals needs to be placed in context of the Court's purposes, such as the provision of child-specific responses for accused in the criminal justice system. Children subject to uplift and committal processes, and in the Criminal Division of the Court more generally, often present with complex and multifaceted issues. As the outlined earlier, the SAC and YPB have noted¹⁷ that children who

¹⁷ SAC, *Reoffending by Children and Young People in Victoria* (2016) and *Crossover Kids: Vulnerable Children in the Youth Justice System, Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court* (2019) reports; YPB *Annual Reports*.

are at risk of or are in detention are likely to have been subject to child protection involvement, have a history of or are themselves victims of abuse, trauma and neglect, present with neuro-disabilities, have a history of or current drug and alcohol abuse issues and poor mental health, and other characteristics that underscore the complexity of offending by children and young people. Against that background, the Court's framework ensures that such matters are dealt with appropriately, expeditiously and with any necessary safeguards.

3. Should the OPP be involved in determining appropriate indictable charges at an earlier stage? If so, how?

The Court's view is that the OPP should be involved in determining appropriate indictable charges at the earliest stage possible.

Since the introduction of the Category A serious youth offences, and the presumption of uplift, the OPP now appear in the Children's Court at the filing hearing for these offences and retain carriage of the matters.

However, it has long been the case the Victoria Police otherwise prosecute all other matters in the Children's Court, including serious indictable offences triable summarily. This includes, for instance, charges of rape or sexual penetration of a child under 16 years. In the view of the Court, where any serious youth offence/s is likely to proceed to contest with witnesses, including child witnesses, being required to give evidence, it would be desirable for the OPP to assume carriage of the prosecution at an appropriately early stage in the proceedings.

The need to ensure that child accused are charged appropriately, and from an early stage, is important as that determination is often critical to the question of jurisdiction. This is a particularly relevant consideration, given the increased numbers of uplifts and committals in the Court post-5 April 2018 reforms.

As shown in **Table 4** of the Court data below, a number of matters where major charges have been withdrawn or where all the charges have been withdrawn have resulted in the matter being finalised summarily.

As the nature of charges against an accused is determinative of the subject-matter jurisdiction of the Court and its ability to hear and determine indictable charges, the more appropriate and accurate the prosecutorial charging process is – the less likely proceedings will be delayed or subject to various jurisdictional and pre-hearing applications, including applications to uplift or for summary jurisdiction.

5. To what extent do committal proceedings play a necessary role in ensuring proper and timely disclosure?

As noted in **Table 4**, there have been matters where Category A serious youth offences have been withdrawn, leading to the matter remaining in the Court. It may be inferred from this data that committal proceedings facilitated proper and timely disclosure. In

some recent cases committals have resulted in the withdrawal of the major charge, or in other instances, all of the charges.

For example, various young people recently came before the Children’s Court charged with a Category A serious youth offence as co-accused. The matters were listed before the one judicial officer of the Court. As all accused were charged with Category A serious youth offences, the matters commenced in the committal stream. At least three of the co-accused had the major charge withdrawn at committal mention stages. Some co-accused had all matters struck out. As a result, those matters remain within the jurisdiction of the Court for hearing and determination, and if relevant, sentencing.

This procedural case study shows how, in committal proceedings, the resolution of issues led to charges being struck out and most of the cases being retained in the Court. Further, it demonstrates how intensive and specialist case management within the Court can ensure the early and effective resolution of matters.

One issue that impacts upon the timely resolution of charges is the time required to obtain the full hand-up brief, including relevant forensic evidence – often directed at the identification of the accused.

13. Should the current test for committal be retained?

The Court is of the view that the current test for a committal in s 128(c) of the CPA, namely, “whether there is evidence of sufficient weight to support a conviction” could be reviewed. There is a compelling argument that the Courts, upon committal, apply the test currently applied by the Director, namely whether there is a “reasonable prospect of conviction”.

The Court’s view is that committals should be retained in its specialist jurisdiction. The Court would support the creation of a more stringent committal test to ensure that only charges that have a reasonable prospect of conviction are uplifted to the higher courts.

16. How effectively do committal proceedings ensure:

- (a) appropriate early resolution of cases**
- (b) efficient use of court time**
- (c) parties are adequately prepared for trial?**

The Court refers to its other answers where there is overlap with this question. Generally, the Court considers that committal proceedings in its jurisdiction ensure the objectives in (a) to (c) are effectively met. For example, **Table 6** shows that from 2013-14 to 2018-19, there were 13 matters where a committal proceeded and where the child was committed on a guilty plea.

The Court notes that there are areas where there are legislative gaps which, in practice, hinder the efficient use of court time. While some of these issues may potentially fall outside the scope of the Issues Paper, the Court highlights these issues as some of the

legislative deficiencies may result in the duplication of witness evidence in committal hearings or impede effective case management of committal proceedings.

The legislative deficiencies are:

- ***The lack of a bar to the making of applications for summary jurisdiction at late or very late stages of criminal proceedings***

Applications for summary jurisdiction have increased since the youth justice reforms commenced on 5 April 2018. **Table 3** shows that from 2014-15 to 2018-19, the Court granted summary jurisdiction in 13 matters. As the Court's case management system does not capture the relevant data, the Court is unable to provide data on refusals of summary jurisdiction.

Section 356 of the CYFA, in its current terms, does not specify any time limit for making application for summary jurisdiction.

In practice this has seen applications for summary jurisdiction being made in the Court during committals, to be heard at the conclusion of the committal hearing. The Court supports legislative amendment to provide further clarity on when, in the interests of justice, such applications can be made temporally. For example, where matters are post-committal mention stages, applications for summary jurisdiction should only be made in exceptional circumstances.

- ***No mechanism for the transfer of related indictable offences to a higher court, post-uplift***

There is currently no legislative mechanism by which the Court can transfer related indictable offences where a child – aged 16 years or older at the time of the alleged offence – is also charged with a Category A (or B) serious youth offence and is committed to stand trial. This was an issue that arose in *WB* where the prosecution did not seek to uplift related driving offences where the child was also charged with the Category A serious youth offence of aggravated carjacking.

Unlike the power to transfer related summary offences pursuant to s 145 of the *Criminal Procedure Act 2009* (which applies in the Court by force of s 528 of the CYFA), there is no mechanism to transfer related indictable offences to a higher court. Uplifting any related indictable offences is subject to the Court finding that 'exceptional circumstances' exist under s 356(3) of the CYFA and the matter/s can also then be uplifted. The potential consequence of this procedural limitation is that separate jurisdictions may be determining charges/sentencing the child for related offending.

The Court considers that there is the need for a discrete power to transfer related indictable offences to the higher court where a Category A (or other uplifted charges) should be heard together rather than the process of determining the uplift of those related indictable charges under s 356(3)(b) of the CYFA on the basis of a finding of exceptional

circumstances.

- ***The inability of the Children’s Court and Magistrates’ Court to conduct joint committal proceedings for non-death related indictable offences***

The Children’s Court and Magistrates’ Court may exercise concurrent jurisdiction over committal proceedings and hold a joint committal proceeding for an adult and child where permitted by s 25 of the *Magistrates’ Court Act 1989* (MCA) and s 516A of the CYFA. Currently the Children’s Court and MCV have jurisdiction to conduct joint committals for accused charged with the six death-related offences, but the legislation precludes the courts conducting joint committals for the other Category A serious youth offences defined in s 3(1) of the CYFA.

The Explanatory Memorandum to the CPA, which amended s 25 of the MCA and s 516A of the CYFA to provide for joint committals where a child and adult are charged in relation to the same offence, stated that the amendments introduced “a basic structure in which agreement between the courts occurs by one court considering the matter and making an order that the matter is appropriate to be determined as a joint committal proceeding.”¹⁸

Enabling joint committals for accused charged with non-death related offences, particularly for Category A serious youth offences, will promote efficiency in the use of court time and resources, avoid the duplication of witness evidence and cross-examination across the jurisdictions, reduce delay and allow streamlined processes where co-accused are being prosecuted across two jurisdictions. Further, s 516A(2)(c) of the CYFA and s 25(4) of the MCA requires the courts to consider “the effect on victims of the offence charged if the committal proceedings were not conducted jointly”.

20. Do committal proceedings contribute to inappropriate delay in the Children’s Court?

The Court’s view is that committal proceedings themselves do not contribute to inappropriate delay in the Children’s Court. For instance, as per the Court data:

- **Table 8** shows that between 2014-15 and 2018-19, matters committed to a higher court during committals spent an average of 175 days in the Court.
- **Table 9** shows the average duration of committal hearings in the Court for the period 2014-15 to 2018-19 was between 1-2 days.
- **Table 10** shows the average period over 2014-15 to 2018-19 was 86 days in the Court when cases resolved to a guilty plea at committal mention.

Further, statistics in the Issues Paper from Victorian courts show that the Court provides the speediest forum for resolution of proceedings.¹⁹ 88.1% of cases are finalised in less

¹⁸ Explanatory Memorandum to the Criminal Procedure Bill 2018, page 139.

¹⁹ VLRC Committals Issues Paper, see at Table 13, page 29.

than 6 months in the Children's Court, and 96.8% are finalised within 12 months. The Children's Court incorporates case management processes and procedures designed to ensure criminal proceedings involving child accused are not unduly delayed, including through FTRC case management.

Critically, legislative reforms in the areas of youth justice and bail law have impacted on and increased demand in the Criminal Division, which in turn increases the risk of delay, in the absence of more resources/funding. Since the introduction of the youth justice reforms on 5 April 2018 the Court has seen an increase in the number of committal cases within its jurisdiction. That legislative reform has contributed to increased demand in the Court's committal stream. **Table 2** shows there was a marked increase in the numbers of Category A serious youth offences in the Court's committal stream for 2018-19 at 45 matters, compared to eight cases during 2017-18 and one for each of the preceding years back to 2014-15.

Further the Court notes that various *Charter of Human Rights and Responsibilities Act 2006* (*Charter*) rights are engaged in criminal proceedings including:

- the right to such protection as is in his/her best interests and is needed by him/her by reason of being a child (s 17(2));
- that an accused child must be brought to trial as quickly as possible (s 23(2));
- the right to be treated in a way that is appropriate for his/her age (s 23(3));
- the right to a criminal procedure that takes account a child's age and the desirability of promoting the child's rehabilitation (s 25(3)).²⁰

While s 25(2)(c) of the *Charter* provides a negative right for an accused to be tried without unreasonable delay, the child-specific right in s 23(2) that an accused child must be brought to trial as quickly as possible is a more onerous requirement than that found in s 25(2)(c) of the *Charter*.²¹ In relation to s 20(3) of the *ACT Human Rights Act*,²² a Magistrate of the Children's Court considered that the words 'as quickly as possible' meant 'with all reasonable expedition of which the circumstances will allow' and 'to give something priority and to take positive steps to expedite completion', in contrast to the words 'without unreasonable delay' which may be satisfied by 'allowing the ordinary course of events to transpire and requiring only that unnecessary or unusual delay be avoided' (see *LM v Children's Court of the Australian Capital Territory* [2014] ACTSC 26 at [8]).

The Court notes that considering delay in relation to child accused requires consideration of times to trial/hearing/finalisation in the Children's Court and higher courts, as the higher courts hear and determine matters post-uptake. The Issues Paper notes²³ that 82.1% of cases are finalised in the County Court in less than 12 months and 97.6% are finalised in less than 24 months. In the Supreme Court 69.5% of cases are finalised within 12 months and 92.7% finalised in less than 24 months. In comparison – 96.8% cases in the

²⁰ See, e.g., *WB v DPP* [2019] VChC 1 at [43].

²¹ Explanatory Memorandum to the Charter of Human Rights and Responsibilities Bill, p 17.

²² Which provides that "[a] child must be brought to trial as quickly as possible".

²³ At page 29.

Children's Court are resolved in less than 12 months. This data underscores the importance of ensuring charges are initiated and case managed in the Children's Court to avoid unnecessary delay or cross-over between jurisdictions.

As the Issues Paper notes at [5.95] delay in the Court may occur when an uplifted matter is transferred back to the Children's Court for determination, for instance, if resolution is achieved late on downgraded charges that can be determined summarily. However, to date, no matters have been remitted to the Children's Court from a higher court in these circumstances. To the contrary, all matters initiated in the committal stream subsequent to the youth justice reforms that have resolved summarily have all been initiated and resolved in the Children's Court. The Court is not aware of any case where the charges have been downgraded post-committal.

As shown in **Table 11**, the Court granted bail in post-committal stages in eight cases out of 33 for the relevant period. This data underscores the importance of ensuring that criminal proceedings for such matters are not delayed given the likelihood of children being remanded for major charge/committal offences.

21. What are the resource implications of any proposed reforms to committal or pre-trial proceedings?

The Court's view is that committals should be retained within this jurisdiction, and further, that more serious indictable matters be kept within the Children's Court for summary determination where appropriate.

The Court highlights that the proposed models in [5.112] – [5.123] of the Issues Paper exclusively focus on the adult courts and, in any event, should not encompass the specialist jurisdiction of the Children's Court. As a case study, a matter before the Court in March 2018 involved a child (SI), aged 15 at the time of the offending, charged with attempted murder and serious driving offences arising from his driving behaviour in the Melbourne CBD.²⁴ SI had no priors. SI had profound hearing loss and an autism spectrum disorder, was mute and had the language communication skills of a 3 to 5-year-old. The matter was intensively case managed in the Court. The major charge of attempted murder was withdrawn by the prosecution at committal mention. SI pleaded guilty to two charges of reckless conduct endangering life, two charges of reckless conduct endangering persons, one charge of assaulting an emergency worker and one charge of unlicensed driving. Expert opinion evidence given during the proceeding showed that SI's unique, profound disabilities meant SI lacked insight into the offending. SI was sentenced to a 12-month Youth Supervision Order, with conviction. This is an example of a case where the major death-related charge was withdrawn, and the matter retained within the jurisdiction of the Court and case managed to finalisation. It shows the importance of retaining committals in the Court and ensuring that charges against a child accused, with multiple complexities, commence and where appropriate, are finalised in this jurisdiction.

²⁴ *DPP v SI (a child)* [2018] VChC 3.

In comparison to other more significant and systemic changes to the adult courts contained in the Issues Paper, the resourcing requirements for the Court's proposals will be commensurate with any increased demand/growth within its Criminal Division.

Part 3: Children's Court data – uplifted and committal stream matters

The Court provides the following data for the same time period as referenced in the Issues Paper, from 2014-15 to 2018-19. However, the committals data provided in this submission is for the entire financial year, whereas the 2018-19 data provided for the Issues Paper was for the period ending 10 May 2019.

Children's Court summary of committals data

In 2017-18:

- **22 cases** were initiated in the committal stream
- 12 cases (55%) were dealt with summarily:
 - The committal charge was struck out in six cases and largely at committal mention stage. All of the cases resolved on a guilty plea and were dealt with summarily.
 - In three cases summary jurisdiction was granted by the Court and the matters resolved on a guilty plea.
 - Three other cases were dealt with summarily – they involved a guilty plea to a charge of rape that appeared to be incorrectly listed for a committal mention, and two charges of incest that were discharged upon a Therapeutic Treatment Order being made.
- 10 cases (45%) proceeded to committal proceeding (either at hearing or by straight hand-up brief):
 - Pleas of guilty were entered in three cases
 - Not guilty pleas were maintained in six cases
 - One case was discharged during committal
 - When cases were committed to a higher court at a committal (including by hearing or straight hand-up brief), the median number of days spent in the Court was 192 days
 - When cases were committed to a higher court at a committal mention, the median number of days spent in the Court was 109 days.

In 2018-19:

- **52 cases** were initiated in the committal stream
- 24 cases (46%) were dealt with summarily:
 - The committal charge was struck out in 12 cases and largely at committal mention stage. All of the cases (save for one pending case) resolved on a guilty plea and were dealt with summarily.
 - In five cases summary jurisdiction was granted by the Court and the matters resolved on a guilty plea.
 - In five cases all charges were struck out.
 - One case was dealt with summarily as the accused was under 16 and the matter should not have commenced in the committal stream.

Children's Court of Victoria

- One case was transferred to the MCV due to the accused's age.
- 18 cases are pending committal mention or committal.
- 10 of the 52 cases (19%) proceeded to committal proceeding (either at hearing or by straight hand-up brief):
 - Pleas of guilty were entered in four cases
 - Not guilty pleas were maintained in six cases
 - When cases were committed to a higher court at a committal (including by hearing or straight hand-up brief), the median number of days spent in the Court was 193 days
 - When cases were committed to a higher court at a committal mention, the median number of days spent in the Court was 80 days.

The Children's Court notes that the above data should be compared with previous data preceding the commencement of the youth justice reforms:

Table 1: Matters uplifted to the higher courts from the Children's Court

The following data shows the numbers of matters uplifted to the County and Supreme Courts from the Children's Court from 2015 to 2019 (up until 30 June 2019), and the age of the accused. Please note that this uplift data is based on calendar years.

Matters involving death-related offences subject to a mandatory uplift:

Year	Age at Offence	Major Charge
2015	15	Attempted murder
Subtotal:	1 matter	
2016	17	Murder
2016	17	Culpable driving causing death
2016	17	Culpable driving causing death
2016	15	Attempted murder
Subtotal:	4 matters	
2017	17	Murder
2017	15	Culpable driving causing death
Subtotal:	2 matters	
2018	16	Murder
2018	16	Murder
2018	17	Culpable driving causing death
2018	17	Culpable driving causing death
2018	17	Murder
2018	17	Attempted murder
Subtotal:	6 matters	
2019	16	Murder
2019	16	Manslaughter
2019	16	Manslaughter
Subtotal:	3 matters	
Total:	16 matters	

Matters involving non-death related offences subject to a presumption of uplift or the exceptional circumstances test in the pre-youth justice reforms period:

Year	Age at Offence	Major Charge
2014	17	Aggravated burglary - firearm
2014	14	Assist offender - serious indictable offence
2014	15	Stalk another person
2014	17	Rape
Subtotal:	4 matters	
2015	17	Do any act-preparation for terrorist act
Subtotal:	1 matter	
2016	15	Rape
2016	17	Int cause serious injury-gross violence
2016	17	Armed robbery
Subtotal:	3 matters	
2017	17	Armed robbery
2017	17	Armed robbery
Subtotal:	2 matters	
Total:	10 matters	

For 2018 and the first half of 2019 – which includes the first three months of January 2018, pre-youth justice reforms commencement on 5 April 2018 – the statistics show:

Year	Age at Offence	Major Charge
2018	17	Int cause serious injury-gross violence
2018	17	Agg home invasion (steal)-offensive weapon
Subtotal:	2 matters	
2019	17	Import mark qty border controlled drug
2019	17	Aggravated home invasion
2019	17	Aggravated home invasion
2019	17	Aggravated home invasion
2019	17	Aggravated home invasion
2019	17	Aggravated home invasion
Subtotal:	6 matters	
Total:	8 matters	

This legislative reform has resulted in more cases involved accused aged 16-17 proceeding via committal post-uplift to the County or Supreme Courts than previously was the case. In the first half of 2019 there have been more uplifted matters than any of the preceding four years, and predominantly for Category A serious youth offences.

Table 2: Committal stream cases initiated, as per major charge

The following table shows the numbers of committal stream cases initiated for the period from 2014-15 to 2018-19 (financial years). This data does not show the outcome of the initiated matters, however jurisdictional issues which have subsequently arisen due to the accused's age are as footnoted.

Major charge	2014-15	2015-16	2016-17	2017-18	2018-19
Death-related offence (mandatory uplift)					
Murder	1	1		3	2
Attempted murder	2	4		2	
Culpable driving		4	1	2	
Manslaughter					2
Sub-total	3	9	1	7	4
Category A serious youth offence (presumption of uplift)					
ICSI – gross violence		1		1	10
Aggravated home invasion			1	6	21 ²⁵
Aggravated carjacking				1	14
Do any act – prep for terrorist act	1				
Sub-total	1	1	1	8	45
Category B serious youth offence (uplift if exceptional circumstances exist)					
Rape	2			1	
Home invasion					1
Sub-total	2			1	1
Other serious indictable offence (uplift if exceptional circumstances exist)					
Armed robbery	1	1	5	1 ²⁶	1
Sex pen – child under 16	2 ²⁷		2		
Criminal damage by fire		2			
Theft of motor vehicle		1			
Aggravated burglary		1	1	1	
Indecent act with child under 16			1		
False imprisonment			1		
Indecent act in presence of child u 16			1		
Incest				2	
Reckless conduct endanger life				1	
Theft of boat				1	
Imp market qty border cont drug					1
Sub-total	3	5	11	6	2
Total:	9	15	13	22	52

There was a marked increase in the numbers of Category A serious youth offences in the Court's committal stream for 2018-19 at 45 matters, compared to eight cases during 2017-18 and one for each of the preceding years back to 2014-15. This increase is attributable to the commencement of the youth justice reforms on 5 April 2018.

Table 3: Committal stream matters where an application for summary jurisdiction was granted

For the 2014/15 to 2018/19 period the Court granted summary jurisdiction in a total of 13 matters, as categorised by major charge:

²⁵ One matter commenced in the committal stream but the accused was under 16 years at the relevant time. Another matter was transferred to the MCV due to the age of the accused.

²⁶ Matter listed in the incorrect jurisdiction.

²⁷ One matter was transferred to the MCV due to the age of the accused.

Year	Major charge	Charge category
2015-16	Theft of motor vehicle	Exceptional circumstances
2016-17	Armed robbery	Exceptional circumstances
	Armed robbery	Exceptional circumstances
	Armed robbery	Exceptional circumstances
2017-18	Aggravated burglary	Exceptional circumstances
	Theft of boat	Exceptional circumstances
	Aggravated carjacking	Category A serious youth offence
2018-19	Aggravated carjacking	Category A serious youth offence
	Aggravated carjacking	Category A serious youth offence
	Aggravated carjacking	Category A serious youth offence
	Aggravated carjacking	Category A serious youth offence
	Aggravated home invasion	Category A serious youth offence
	Home invasion	Category B serious youth offence
Total	13 matters	

Due to limitations in its case management system, the Court is unable to provide figures on how many times summary jurisdiction was refused during this period.

Table 4: Matters in the committal stream and outcomes (heard summarily)

The following table outlines matters initiated in the committal stream by outcomes (heard summarily):

- where summary jurisdiction was granted;
- where all charges were struck out;
- where the major (committal) charge was struck out;
- “other” where unidentifiable or where there are relevant comments;
- at what stage of the proceedings the relevant event occurred (where identifiable).

[In the below table “Y” = yes, and “COMM” = committal mention.]

Major charge	Summary jurisdiction granted	All charges struck out	Major charge struck out	Other / comments	Stage of proceedings
2014-15					
Armed robbery				Other ²⁸	
Sex pen child u 16		Y		TTO ²⁹	
Sex pen child u 16		Y ³⁰			
Rape		Y			
Attempted murder			Y		Committal
Subtotal:		3 matters	1 matter		
2015-16					
Attempted murder			Y		Committal
Culpable driving			Y		COMM
Culpable driving			Y		COMM

²⁸ Adjourned from filing hearing to mention without comments.

²⁹ Therapeutic Treatment Order.

³⁰ Matter transferred to the MCV due to the age of the accused.

Children's Court of Victoria

Criminal damage by fire			Y		COMM
Criminal damage by fire			Y		COMM
Armed robbery				Other ³¹	
Theft of motor vehicle	Y				COMM
Attempted murder			Y		COMM
Agg burglary				Other	COMM
Subtotal:	1 matter		6 matters		
2016-17					
Sex pen child u 16				Other ³²	
Indecent act with child u 16		Y		Discharged due to mental impairment	
False imprisonment				Other ³³	
Armed robbery	Y				COMM
Indecent act in presence of child u 16		Y			COMM
Armed robbery	Y				COMM
Armed robbery	Y				COMM
Agg burglary			Y		Committal
Sex pen child u 16		Y		Other ³⁴	
Agg home invasion				Other ³⁵	
Subtotal:	3 matters	3 matters	1 matter		
2017-18					
Attempted murder			Y		COMM
Incest				TTO	
Incest				TTO	
Aggravated burglary	Y				
Theft of boat	Y				
Agg home invasion			Y		COMM
Agg home invasion			Y		COMM
Rape				Other ³⁶	
Agg home invasion			Y		COMM
Agg home invasion			Y		COMM
Agg carjacking	Y				
Reckless conduct endanger life			Y		
Subtotal:	3 matters		6 matters		
2018-19					
ICSI – gross violence			Y		COMM
ICSI – gross violence			Y		COMM
ICSI – gross violence			Y		COMM
Agg home invasion		Y			COMM

³¹ Adjourned from filing hearing to mention without comments.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Adjourned from committal mention to mention without comments.

³⁶ Appears to have been incorrectly listed for committal mention.

Agg carjacking	Y				COMM
Agg home invasion				Other ³⁷	
Agg home invasion			Y		COMM
ICSI – gross violence			Y		COMM
Agg home invasion			Y		COMM
Agg carjacking	Y				COMM
Agg carjacking	Y				COMM
Agg home invasion			Y		Committal
ICIS – gross violence			Y		Filing hearing
Home invasion	Y				COMM
Agg home invasion	Y				COMM
Agg home invasion			Y		COMM
Agg home invasion			Y		COMM
Agg home invasion		Y			COMM
Armed robbery		Y		Other ³⁸	Filing hearing
Agg carjacking			Y		COMM
Agg carjacking	Y				
Agg carjacking			Y		COMM
Agg carjacking			Y		COMM
Agg home invasion		Y			COMM
Agg home invasion		Y			COMM
Agg home invasion				Other ³⁹	
Subtotal:	6 matters	5 matters	13 matters		
Total:	13 matters	11 matters	27 matters	N/A	N/A

Where the major charge was struck out during committal proceedings that usually occurred at committal mention stage.

Table 5: Number of days in committal stream where matters resolved summarily or were the subject of a successful application for summary jurisdiction

Year	Major charge	Days
14/15	Armed robbery ⁴⁰	12
14/15	Sex pen child u 16	28
14/15	Sex pen child u 16 ⁴¹	35
14/15	Rape	42
14/15	Attempted murder	138
Subtotal:	5 matters (average 51 days)	
15/16	Attempted murder	109
15/16	Culpable driving	101
15/16	Culpable driving	101
15/16	Criminal damage by fire	21
15/16	Criminal damage by fire	21
15/16	Armed robbery ⁴²	13

³⁷ Matter commenced in the committal stream but the accused was under 16 years at the relevant time.

³⁸ Listed in incorrect jurisdiction.

³⁹ Matter transferred to the MCV due to the age of the accused.

⁴⁰ Adjourned from filing hearing without comments.

⁴¹ Matter transferred to the MCV due to the age of the accused.

⁴² Adjourned from filing hearing to mention without comments.

Children's Court of Victoria

15/16	Theft of motor vehicle	14
15/16	Attempted murder	208
15/16	Aggravated burglary	8
Subtotal:	9 matters (average 66 days)	
16/17	Sex pen child u 16 ⁴³	11
16/17	Indecent act with child u 16	56
16/17	False imprisonment ⁴⁴	30
16/17	Armed robbery	20
16/17	Indecent act in pres of child u 16	100
16/17	Armed robbery	178
16/17	Armed robbery	178
16/17	Aggravated burglary	170
16/17	Sex pen child u 16 ⁴⁵	2
16/17	Agg home invasion ⁴⁶	19
Subtotal:	10 matters (average 76 days)	
17/18	Attempted murder	150
17/18	Incest	13
17/18	Incest	13
17/18	Aggravated burglary	155
17/18	Theft of boat	155
17/18	Agg home invasion	83
17/18	Agg home invasion	83
17/18	Rape ⁴⁷	56
17/18	Agg home invasion	21
17/18	Agg home invasion	21
17/18	Agg car jacking	208
17/18	Reckless cond endanger life	10
Subtotal:	12 matters (average 81 days)	
18/19	ICSI - gross violence	42
18/19	ICSI - gross violence	52
18/19	ICSI - gross violence	64
18/19	Agg home invasion	20
18/19	Agg car jacking	105
18/19	Agg home invasion ⁴⁸	36
18/19	Agg home invasion	160
18/19	ICSI - gross violence	88
18/19	Agg home invasion	217
18/19	Agg car jacking	91
18/19	Agg car jacking	69
18/19	Agg home invasion	138
18/19	Home invasion	79
18/19	Agg home invasion	83
18/19	Agg home invasion	129
18/19	Agg home invasion	127

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Adjourned from committal mention to mention without comments.

⁴⁷ Appears to have been incorrectly listed for committal mention.

⁴⁸ Matter commenced in the committal stream but the accused was under 16 years at the relevant time.

18/19	Agg home invasion	99
18/19	Agg car jacking	81
18/19	Agg car jacking	82
18/19	Agg car jacking	82
18/19	Agg home invasion	56
18/19	Agg home invasion	43
18/19	Agg home invasion ⁴⁹	80
Subtotal:	23 matters (average 88 days)	
Total:	59 matters (average 78 days)	

On a rough average for the period from 2014-15 to 2018-19, matters spent 78 days in the committal stream for the relevant period (this includes cases involving transfers to the adult jurisdiction).

Table 6: Number of cases where a committal proceeded and the number of cases where the child was committed on a guilty plea:

Year	Major charge
2014-15	Do any act – prep for terrorist act
2015-16	Culpable driving
2015-16	Culpable driving
2015-16	Attempted murder
2016-17	Armed robbery
2016-17	Culpable driving
2017-18	Culpable driving
2017-18	Culpable driving
2017-18	Agg home invasion
2018-19	Agg home invasion
2018-19	Agg home invasion
2018-19	Imp market qty border cont drug
2018-19	ICSI – gross violence
Total	13 matters

From 2013-14 to 2018/19, there were 13 matters where a committal proceeded and where the child was committed on a guilty plea.

Table 7: Matters where orders were made to transfer related summary offences

Year	Major charge
2014-15	Attempted murder
2015-16	Attempted murder
2016-17	Culpable driving
2016-17	Armed robbery
2017-18	Armed robbery
2017-18	Culpable driving
2017-18	Culpable driving
2017-18	ICSI – gross violence
2017-18	Attempted murder

⁴⁹ Matter transferred to the MCV due to the age of the accused.

Children's Court of Victoria

2018-19	Imp market qty border cont drug
2018-19	ICSI – gross violence
Total	11 matters

Table 8: When matters are committed to a higher court at a committal proceeding,⁵⁰ the number of days in the Children's Court

Year	Major charge	Days
14/15	Rape	393
14/15	Attempted murder	111
14/15	Murder	379
14/15	Do any act- prep for terrorist act	196
Subtotal:	4 matters (average 270 days)	
15/16	Culpable driving	221
15/16	Culpable driving	174
15/16	ICSI – gross violence	106
15/16	Attempted murder	118
15/16	Murder	281
15/16	Attempted murder	80
Subtotal:	6 matters (average 163 days)	
16/17	Armed robbery	10
16/17	Culpable driving	133
16/17	Armed robbery	101
Subtotal:	3 matters (average 81 days)	
17/18	Armed robbery	50
17/18	Murder	196
17/18	Murder	196
17/18	Culpable driving	252
17/18	Culpable driving	52
17/18	ICSI – gross violence	142
17/18	Murder	260
17/18	Attempted murder	262
17/18	Agg home invasion	167
17/18	Agg home invasion	178
Subtotal:	10 matters (average 176 days)	
18/19	Murder	227
18/19	Manslaughter	212
18/19	Manslaughter	212
18/19	Agg home invasion	203
18/19	Agg home invasion	154
18/19	Agg home invasion	188
18/19	Agg home invasion	179
18/19	Agg home invasion	175
18/19	Imp market qty border cont drug	41
18/19	ICSI – gross violence	119
Subtotal:	10 matters (average 171 days)	
Total:	33 matters (average 175 days)	

⁵⁰ Matters including committal hearings with oral evidence, and committal proceedings with straight hand-up briefs.

Children's Court of Victoria

During the relevant time period, matters committed to a higher court during committals spent an average of 175 days in the Court (less than six months).

Table 9: Where matters proceeded to committal hearing, the duration of the committal hearing

Year	Major charge	Days
14/15	Rape	1 day
14/15	Murder	2 days
15/16	Culpable driving	1 day
15/16	ICSI – gross violence	1 day
15/16	Murder	2 days
16/17	Armed robbery	1 day
17/18	Armed robbery	1 day
17/18	Murder	3 days
17/18	Murder	3 days
17/18	Murder	7 days
17/18	Attempted murder	2 days
17/18	Agg home invasion	2 days
18/19	Murder	1 day
18/19	Manslaughter	2 days
18/19	Manslaughter	2 days
18/19	Agg home invasion	1 day
18/19	Agg home invasion	1 day
18/19	Agg home invasion	1 day

The average duration of committal hearings in the Court for the period 2014-15 to 2018-19 was between 1-2 days.

Table 10: When cases are resolved to a plea of guilty at committal mention, the number of days in the Children's Court

Year	Major charge	Days
15/16	Attempted murder	80
Subtotal:	1 matter (80 days)	
16/17	Armed robbery	10
16/17	Culpable driving	133
Subtotal:	2 matters (72 days)	
17/18	Culpable driving	52
17/18	Agg home invasion	167
Subtotal:	2 matters (110 days)	
18/19	Imp market qty border cont drug	41
18/19	ICSI - gross violence	119
Subtotal:	2 matters (80 days)	
Total:	7 matters (average 86 days)	

For the 2014-15 to 2018-19 period, the average was 86 days in the Court when cases resolved to a guilty plea at committal mention.

Table 11: Where a child was on remand/bail, post-committal

Year	Major charge	Remand/bail
14/15	Rape	BAIL
14/15	Attempted murder	REM
14/15	Murder	REM
14/15	Do any act- prep for terrorist act	REM
15/16	Culpable driving	BAIL
15/16	Culpable driving	REM
15/16	ICSI - gross violence	REM
15/16	Attempted murder	REM
15/16	Murder	REM
15/16	Attempted murder	REM
16/17	Armed robbery	REM
16/17	Culpable driving	REM
16/17	Armed robbery	REM
17/18	Armed robbery	REM
17/18	Murder	REM
17/18	Murder	REM
17/18	Culpable driving	REM
17/18	Culpable driving	REM
17/18	ICSI - gross violence	REM
17/18	Murder	REM
17/18	Attempted murder	BAIL
17/18	Agg home invasion	BAIL
17/18	Agg home invasion	BAIL
18/19	Murder	REM
18/19	Manslaughter	REM
18/19	Manslaughter	BAIL
18/19	Agg home invasion	BAIL
18/19	Agg home invasion	REM
18/19	Agg home invasion	REM
18/19	Agg home invasion	REM
18/19	Agg home invasion	REM
18/19	Imp market qty border cont drug	BAIL
18/19	ICSI - gross violence	REM
Total:	33 matters	

The Children's Court granted bail in post-committal stages in eight cases out of 33 for the relevant period.